

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 05-0498  
USE TAX  
FOR TAX YEAR 2004**

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**ISSUE**

**I. Use Tax: Exemption**

**Authority:** IC 6-8.1-5-1(b); IC 6-2.5-3-2; IC 6-2.5-3-4(a)(2); IC 6-2.5-5-8(b); IC 6-2.5-1-21(a); IC 6-2.5-5-27; 45 IAC 2.2-3-4; Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003).

Taxpayer protests disallowance of a use tax exemption.

**II. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the negligence penalty.

**STATEMENT OF FACTS**

The Indiana Department of Revenue ("Department") notified the taxpayer that the Department's records indicated the taxpayer did not properly register its aircraft with the State. Taxpayer submitted an application for aircraft registration and claimed an exemption from sales and uses tax. The Department denied the exemption claim and issued a notice of proposed assessment for use tax. Taxpayer submitted a protest challenging the assessment. The Department held a hearing and now presents this Letter of Findings, with additional facts to follow.

**I. Sales and Use Tax: Aircraft Exemption**

**DISCUSSION**

Taxpayer purchased an aircraft on June 30, 2004, for \$247,500. From June of 2004 to September of 2004, the taxpayer's owner used the aircraft for twenty-five flight hours. On October 29,

2004, taxpayer registered the aircraft with the State. On taxpayer's application for registration, the taxpayer claimed an exemption from sales and use tax based on engaging in the business of renting and leasing to others. The Department's aircraft compliance division denied the exemption claim. The aircraft compliance division determined that since the taxpayer did not use the aircraft in an exempt manner after purchasing the aircraft, the taxpayer was not entitled to an exemption from sales and use tax.

A presumption exists that all tax assessments are accurate. IC 6-8.1-5-1(b). IC 6-2.5-3-2 provides:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.
- (b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:
  - (1) is acquired in a transaction that is an isolated or occasional sale; and
  - (2) is required to be titled, licensed, or registered by this state for use in Indiana.

45 IAC 2.2-3-4 further clarifies IC 6-2.5-3-2 and states:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

IC 6-2.5-3-4(a)(2) allows for a use tax exemption if:

[T]he property is acquired in a transaction that is wholly or partially exempt from state gross retail under any part of IC 6-2.5-5, except IC 6-2.5-5-24(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.

The burden of establishing entitlement to an exemption lies on the taxpayer claiming the exemption. Indiana Dept. of Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003). The Department will strictly construe the exemption statutes against the taxpayer claiming the exemption. Id.

Taxpayer offers several arguments to establish its entitlement to a use tax exemption. First, the taxpayer argues the aircraft was exempt from use tax pursuant to IC 6-2.5-5-8(b). IC 6-2.5-5-8(b) provides:

Transactions involving tangible personal property... are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

The taxpayer insists its sole purpose for acquiring the aircraft was to expand its aircraft leasing operations. However, the sole lease agreement the taxpayer provided to substantiate its IC 6-2.5-5-8(b) exemption claim lacked consideration. To have a valid lease agreement, IC 6-2.5-1-21(a) requires that the lease have a “transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration....” Thus, since the only lease agreement entered into by the taxpayer was not valid, the Department was correct to deny the taxpayer’s exemption claim for renting and leasing to others.

The taxpayer further argues the aircraft was exempt from use tax under IC 6-2.5-5-27. IC 6-2.5-5-27 provides:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

To satisfy the provisions of IC 6-2.5-5-27, the taxpayer must provide evidence that the taxpayer had the authority to transport individuals or property. A taxpayer can prove its authority to render those types of services by obtaining a FAR Part 121 or a FAR Part 135 certificate. The FAA only allows an aircraft operator with a FAR Part 121 or FAR Part 135 certificate to operate an aircraft for compensation or hire in carrying people or property. The taxpayer provided the Department with no evidence to support whether it could operate the aircraft in question under either a Part 121 or a Part 135 certificate. Moreover, during the hearing, the taxpayer explained it leased the aircraft to another business, which in turn used the aircraft for commercial operations. Thus, if IC 6-2.5-5-27 is applicable at all, the statute would apply to the party that directly engaged in the business of using the aircraft for public transportation. Therefore, the exemption found in IC 6-2.5-5-27 is not applicable to the taxpayer.

As a final point, the taxpayer argues that in denying its exemption claim the Department’s determination is contrary to the provisions and requirements of the United States Constitution, the Commerce Clause, the Due Process Clause, and the Indiana Constitution. But, the taxpayer fails to address or analyze exactly how the determination runs contrary to those provisions. Thus, the taxpayer’s constitutional challenge does not provide a foundation for the Department to address the issue.

In summation, the aircraft compliance division was correct to deny the taxpayer’s use tax exemption. The taxpayer failed to sufficiently establish its entitlement to a use tax exemption under the provisions of IC 6-2.5-3-4(a)(2).

### **FINDING**

For the reasons stated above, the Department denies the taxpayer’s protest.

## **II. Tax Administration – Penalty**

## **DISCUSSION**

Taxpayer argues the Department should not impose a negligence penalty on the proposed tax deficiency. The taxpayer asserts that any such deficiency the Department identified was not due to “carelessness, thoughtlessness, disregard or inattention to duties” on the part of the taxpayer.

IC 6-8.1-10-2.1(a)(3) provides in part that “if a person... incurs, upon examination by the department, a deficiency that is due to negligence..., the person is subject to a penalty.”

Negligence is defined “as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer....” 45 IAC 15-11-2(b). Negligence is

“determined on a case-by-case basis according to the facts and circumstances of each taxpayer.”  
Id.

The Department may waive the penalty upon a showing that the failure to pay the deficiency was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1(d). However, in order to establish reasonable cause, the taxpayer must demonstrate that the taxpayer “exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed....” 45 IAC 15-11-2(c).

The taxpayer stated it engaged in the business of renting and leasing aircraft to the general public for the last seven years. The taxpayer conceded that it knew it needed to register the aircraft with the State within thirty-one days of purchasing the aircraft. However, the taxpayer did not register the aircraft with the state until after the Department’s aircraft compliance division notified the taxpayer. The Department can properly impose the negligence penalty when the taxpayer is inattentive to its duties. 45 IAC 15-11-2(b). The taxpayer provided the Department with no evidence to establish that the taxpayer’s inattention was due to reasonable cause. Thus, the Department was correct in imposing a negligence penalty given that the taxpayer’s inattention to its duties constituted negligence.

## **FINDING**

The Department denies the taxpayer’s protest.